

Debra Waller
Newton, Ma 02468
dblewaller@aol.com

Attorney General Martha Coakley
Attn: Antitrust Division
Office of Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 722-0184

RE: Opposition to Partners Healthcare Settlement, Civil Action 14-2033-BLS2

10/21/14

This is my public comment on Civil Action 14-2033-BLS2 filed on 9/25/14 with the Suffolk Superior Court and titled "Amended Final Judgment by Consent." I have previously sent in comments on the original 6/24/14 14-2033 "Joint Motion for Entry of Final Judgment by Consent" during the first round of public comments which closed on 9/15/14. I live next door to a Partners Healthcare facility, Newton-Wellesley Hospital, and my previous comment dealt with my futile experience in trying to get Partners Healthcare to honor a Special Permit agreement they did want to honor. They succeeded in avoiding the agreement, primarily by piling on seemingly unimportant technicalities, until the agreement was too complicated to ever enforce. Based on my negative experience with Partners Healthcare tactics, I see nothing in the Amended Final Judgment that fixes any concerns with the first Final Judgment.

My main complaint is that The Commonwealth of Massachusetts is giving up far too much in return for practically nothing that is really enforceable with Partners Healthcare. I am specifically concerned with Paragraph 134, quoted below:

134. This Consent Judgment shall resolve the liability of Partners, all Partners Corporate Affiliates and all Partners Providers (including without limitation PCHI) and all Partners Contracting Affiliates for any claim that the Attorney General has or may have based on, arising out of or resulting from any violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and of Massachusetts General Laws c. 93A based on Partners' joint Payer contracting practices through (i) the Effective Date or (ii) with respect to Partners Contracting Affiliates that are subject to the restriction on affiliate contracting set forth in Section IV.D.i. (and not including Excepted Partners Contracting Affiliates as defined in Section IV.D.ii.), the date or dates upon which each Partners Contracting Affiliate ceases its participation in a Partners' Payer Contract pursuant to Section IV.D. of this Consent Judgment. Based on the terms and conditions described in this Consent Judgment, including without limitation Section IV.D. above, the Attorney General is closing her current investigation into Partners' joint Payer contracting practices.

This appears to mean that Paragraph 134 absolves Partners Healthcare (not including Excepted Partners Contracting Affiliates) of all legal responsibility for most of its anti-trust behavior with regard to joint payer contracting practices (without limitation) before the effective date of late 2014. This blanket forgiveness thus applies to all 20 years of Partners Healthcare previous contract negotiations, since Partners Healthcare's founding in 1994. These past contract negotiations include the May 2000 handshake agreement between Dr. Samuel O. Thier, (Partners CEO) executive and William C. Van Faasen (Blue Cross Blue Shield CEO) detailed in the 12/28/2008 Boston Globe story "A Handshake that made Healthcare History."

Since Attorney General Coakley launched her investigation into Partners Healthcare in January 2009, a month after the Globe story, by requesting materials from Blue Cross and Partners Healthcare, there were high hopes the Partners Healthcare - Blue Cross deal would be investigated. Did this investigation occur? Or was all energy directed towards Partners proposed new acquisitions that were only announced in 2012 and 2013? If so, why does the Amended Final Judgment go out of its way to forgive everything for 20 years?

This blanket forgiveness of all Partners Healthcare past actions since 1994 is in sharp contrast to Paragraphs 33, 70, 88, 103, and 148, in which Partners or (in one case) the AG may petition the court to deal with disagreements about the restrictions imposed by paragraphs 33, 70, 88, 103, or 148. Partners Healthcare may also petition the court for future disagreements on the restrictions found on pages 10, 17, 22 of the document "Attachment A: Restrictions on Partners Price Growth." Partners Healthcare can be counted on to exercise all petition opportunities to increase future revenue.

I would also like to comment on the document "Plaintiff Commonwealth of Massachusetts Response to Public Comments" filed by Attorney General Coakley on 9/25/14. In this document, Attorney General Coakley states the following:

As set forth above, multiple commenters identify harms they believe stem from Partners activities in the health care market, beyond the acquisitions and contracting practices described in the Complaint. The proper frame through which the Court evaluates the proposed Consent Judgment, however, is whether the remedies contained therein reasonably address the potential harms that may or may not result from the three claims stated in the Complaint: (1) that the acquisition of SSHEC by Partners violates G.L. c. 93A; (2) that the acquisition of Hallmark by Partners violates G.L. c. 93A; and (3) that Partners practice of negotiating on behalf of certain unowned affiliates violates G.L. c. 93A. While the commenters identify conduct that may form the basis of potential legal claims if proven, the Office of the Attorney General is not bringing such claims at this time. It is well-settled that the Attorney General has broad discretion to determine what claims it brings against a defendant. [Pages 28, 29]

This is the crux of the problem. This AG investigation has been conducted largely in secret for the past 5 years, and the resulting agreement will be the only thing controlling Partners Healthcare for the next 10 years. In fact, Paragraph 134 of the Agreement seems to indicate that Partners behavior is no longer liable for any ant-trust behavior related to its joint payer contracting practices. What other anti-trust behavior falls outside the definition of "joint payer contracting practices?" And who is supposed to prosecute Partners for these other anti-trust practices in the future? And how long will that take?

The agreement is not nearly enough to address what many in the Commonwealth feel is "wrong" with Partners Healthcare. And the Attorney General is the only one with any power to fix this. To simply say that the Attorney General has "broad discretion" misses the point. Many Massachusetts Citizens see the Attorney General as their only hope in fighting the well-funded politically-connected Partners Healthcare. Many are simply asking the Attorney General not to brush these hopes aside.

Sincerely,



Debra Waller